
(1999) 07 KL CK 0009
In the High Court Of Kerala
Case No : Criminal M.C. No. 728 of 1997

Rajan and Others

APPELLANT

Vs

C.I. of Police and Others

RESPONDENT

Date of Decision : 01-07-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1999) 2 KLJ 234

Hon'ble Judges : K.A. Mohamed Shafi, J

Bench : Single Bench

Advocate : C.J. Joy and Sunny Xavier, for the Appellant; P.N. Sukumaran (Public Prosecutor), for the Respondent

Judgement

K.A. Mohamed Shafi

1. This CrI.M.C. is filed by the accused in S.T. 1765/96 on the file of the Judicial First Class Magistrate's Court-III, Thrissur to quash the entire proceedings under Sec. 482 of the Cr.P.C. On the basis of the charge-sheet laid by the 1st respondent, C.I. of Police, Mannuthy Police Station in Crime No. 193/94 the petitioners are prosecuted for the offence punishable under Secs. 15(c) and 56(b) of the Abkari Act. The allegation made against the petitioners is that on 16-11-1994 at 8.45 p.m. petitioners 1 to 28 were found drinking and about to drink alcohol at the restaurant room of the Hotel Mayura, of which the 29th petitioner is the proprietor.

2. The petitioners have contended that the above false case is instituted with the oblique and mala fide motive to harass the 29th petitioner, the proprietor of the hotel Mayura, petitioners 25 to 28 who are the employees of the hotel and other petitioners who are the customers in the hotel, due to the enmity of a high ranking police official towards the 29th petitioner and to scare the customers coming to the hotel. It is also contended that at the instigation of the high ranking police official several prosecution proceedings were initiated against the 29th petitioner and all of them ended in his honorable acquittal. It is also

contended that the 29th petitioner had filed petitions against that police official before the competent authorities. The petitioner has produced several documents in support of the allegation that the prosecutions launched against the 29th petitioner were ended in acquittal and he has filed complaint against that police official. But these aspects are not matters for consideration in this CrI.M.C. filed by the petitioners to quash the proceedings under Sec. 482 of the Cr.P.C.

3. The petitioners have contended that the 29th petitioner has obtained a valid licence to conduct Bar in the premises of the Hotel Mayura evidenced by Annexure-A1 and therefore the allegation that the petitioners were found consuming alcohol in the premises of the hotel and as such they are guilty of the offences punishable under Secs. 15(c) and 56(b) of the Abkari Act is absolutely illegal and unsustainable.

4. In the schedule to Annexure A1 the boundaries of the licensed premises are described wherein the hotel is situated. The boundaries of the bar room are also described in the schedule. From the description of the boundaries of the bar room it is clear that the bar room is within the boundaries - North: Trichur-Palghat Road, East: Restaurant, South: Store and Staircase, and West: Pocket Road. The contention of the petitioners that since the entire property wherein the hotel is situated is described as licensed premises, the 29th petitioner is entitled to vend and the other petitioners are entitled to drink alcohol anywhere in the premise, is absolutely unsustainable. In Annexure A1 it is stated that the 29th petitioner is granted licence for vending foreign liquor in his hotel (restaurant) situated as shown in the annexed schedule during the year ending the last day of March 1993 subject to the following conditions to be observed by the licensee. The first condition is that the privilege is extended to the sale of foreign liquor (for consumption within a room specifically approved for the purpose) to residents in the hotel or Boarding House for the use of those residents and that of their guests or to European Fashion. Therefore it is clear from condition No. 1 in the licence, Annexure - A1 that the 29th petitioner is permitted to sell foreign liquor within a room specifically approved for that purpose to the residents in the hotel OP Boarding House and their guests etc. Therefore, inspite of the fact that the entire premises of the hotel is described as the licensed premises in the first schedule, the description of the bar room given in the second schedule coupled with condition No. 1 in the licence establishes without any iota of doubt that licence is granted to vend foreign liquor in the bar room specifically described in the schedule. Therefore, vending liquor at any place in the hotel other than the room specifically approved and scheduled as per the licence, is contrary to the conditions stipulate in the licence.

5. The offence alleged against the petitioners under Sec. 56(b) of the Abkari Act is in respect of breach of any condition of the licence. The other offence alleged against the petitioners is under Sec. 15(c) of the Abkari Act, which is in respect of consumption of liquor in public place. As per explanation I to Sec. 15(c), for the purposes of that section public place means any street, court, police station

or other public office or any club or any place of public amusement or resort or on board any passenger boat or vessel or any public passenger vehicle or a dining or refreshment room in a restaurant, hotel, rest house, travellers bungalow or tourists bungalow where different individuals or groups of persons consume food, but shall not include any private residential room. Therefore, it is clear from explanation I to Sec. 15(c) that a dining or refreshment room in a restaurant is a public place where consumption of liquor is prohibited without permission under the licence granted by the Commissioner. As already noted, Annexure A1 licence issued to the 29th petitioner does not permit the sale or consumption of (sic) in any other room in the hotel except the bar room specifically described in the schedule. Therefore, vending and consumption of alcohol in the restaurant without any permission from the competent authority is prohibited and is punishable under Sec.15(c) of the Abkari Act. It is clear from the allegations made against the petitioners that ingredients prima facie to attract the offences punishable under Secs. 15(c) and 56(b) of the Abkari Act are made out in this case. The question whether the prosecution could prove the guilt of the petitioners or whether the prosecution is launched with the deliberate intention to harass the petitioners, especially the 29th petitioner at the instigation of a high ranking police official who is on inimical terms with him, are matters of evidenced to be considered by the trial court at the stage of trial.

Therefore, I find absolutely no ground to quash the prosecution proceedings against the petitioners by invoking the provisions of Sec. 482 of the CrI.P.C. Hence this CrI.M.C. is dismissed.